

IN THE MATTER OF Jesode Hatorah,
Respondent.

Docket No. 95-57-SP
Student Financial Assistance Proceeding

Appearances: Richard A. Finkel, Esq., Meissner, Kleinberg & Finkel, of New York, New York, for Jesode Hatorah.

Russell B. Wolff, Esq., Office of the General Counsel, Washington, D.C., for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

DECISION

On January 24, 1995, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a **final program review determination** (FPRD) finding that Jesode Hatorah improperly disbursed \$2,459,000 in Federal student financial assistance funds for award years 1992-93 and 1993-94 for failure to submit to ED a close-out audit, in violation of Title IV of the Higher Education Act of 1965, as amended (Title IV). See 20 U.S.C. § 1070 et seq.

In a submission dated March 3, 1995, titled "Appeal of Final Program Review Determination," Jesode Hatorah disputed the findings of the FPRD on the sole basis that the FPRD raises moot issues because the institution has permanently ceased operations. On June 6, 1995, SFAP filed a Motion for Termination of Proceedings and Entry of Judgment Against Respondent. According to SFAP, since Jesode Hatorah failed to file a submission in compliance with my Order Governing Proceedings, [See footnote 1 / I](#) should terminate this proceeding and assess liabilities indicated in the FPRD against Jesode Hatorah. In support of its motion, SFAP relies on 34 C.F.R. §

668.117(c)(3), which authorizes me to terminate the hearing process and issue a decision against a party if that party does not meet time limits established pursuant to my orders.

In response to SFAP's motion, Jesode Hatorah contends that the institution submitted all the materials in its possession concerning the FPRD with its March 3, 1995, submission. [See footnote 2 / 2](#) In addition, Jesode Hatorah requests that I dismiss this proceeding on the ground that the closing of Jesode Hatorah and the cessation of all operations by the school renders this proceeding moot.

Despite the institution's argument to the contrary, it is abundantly clear that the fact that Jesode Hatorah has closed and ceased operations does not require this action to be dismissed as moot. In

In the Matter of Computer Processing Institute, Dkt. No. 92-20-SP, U.S. Dep't of Educ. (April 13, 1995), the Secretary eliminated any doubt that a recovery of funds proceeding may go forward despite the fact that a school has closed. In doing so, the Secretary held that in cases where the Department seeks to recover improperly disbursed Title IV funds, as distinguished from cases where the primary remedy sought by the Department is the termination of an institution's eligibility to participate in Title IV programs, the case is *not* rendered moot simply because the institution has closed or ceased operating. Accordingly, Jesode Hatorah's request that I dismiss this proceeding as moot is DENIED.

Pursuant to 34 C.F.R. § 668.117(c)(3), I have the authority and responsibility to terminate the hearing process and issue a decision against a party if that party does not meet time limits established pursuant to my orders. Although Jesode Hatorah did not file a submission in compliance with my Order Governing Proceedings, the institution apparently chose to rely upon its March 10, 1995, and June 15, 1995, submissions as the basis for its challenge of the FPRD. Consequently, the question presented is whether Jesode Hatorah has carried its burden of proof. [See footnote 3 3](#) After a review of the FPRD, I am convinced that the findings contained therein sufficiently state allegations in a manner that would require Jesode Hatorah to carry its burden of proof. In both of Jesode Hatorah's submissions, the institution argues that the FPRD should be dismissed on the ground of mootness, but does not proffer evidence showing that Jesode Hatorah submitted an

appropriate close-out audit. Nor does the institution otherwise show that the Title IV expenditures questioned in the FPRD were disbursed properly. In fact, the record contains no evidentiary submissions from the institution that documents or accounts for Jesode Hatorah's expenditure of Title IV funds. Notably, the FPRD states that SFAP program reviewers went to the school on November 23, 1993, to review and copy student records, but access to those records was denied. The reviewers were given a handwritten note which stated, in part, that "no information is to be given" however, and directed the reviewers to contact the school's attorney for answers to any questions. Consequently, it is clear from a review of the record that the institution has failed to provide SFAP with an accounting of its expenditure of Title IV funds for the period at issue. In that regard, I find that Jesode Hatorah has failed to carry its burden of proof in establishing that the institution's expenditures of Title IV funds were proper.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that in accordance with the Final Program Review Determination Jesode Hatorah pay to the United States Department of Education the sum of \$2,459,000.

Ernest C. Canellos
Chief Judge

Issued: June 29, 1995
Washington, D.C.

Footnote: 1 1 The Order Governing Proceedings was issued on April 10, 1995; that order requested the Respondent to file its brief and any evidentiary submissions within thirty days of the date of the order.

Footnote: 2 2 My review of this submission reveals that the March 3, 1995, submission consists of: a 7 page brief setting out the school's argument that the FPRD should be dismissed on the ground of mootness; attached to the brief is a document identified as "Exhibit A," which is a copy of the FPRD; attached to the FPRD is a document identified as "Jesode Hatorah - FPRD Exhibit 1," which is two pages in length and consists of a copy of a handwritten note, referred to later in this decision, and a copy of ED's Fedwire EFT instructions. Nothing more was submitted.

*Footnote: 3 3 In this proceeding, the institution has the burden of proving that the questioned expenditures were proper. 34 C.F.R. § 668.116(d); see also *In the Matter of Sinclair Community College*, Dkt. No. 89-21-S, U.S. Dep't of Education (Decision of the Secretary September 26, 1991).*